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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* BHAJMOHAN (RICKY) SINGH, DIANE S.  
KALISHMAN, MONIQUE NIELSEN, BRYAN WILSON  
BADGER, BRIGITTE MARTINEAU, and  
ROBERT CARVALHO

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Appeal 2009-004604  
Application 09/881,935  
Technology Center 1700

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Decided: January 19, 2010

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Before EDWARD C. KIMLIN, ADRIENE LEPIANE HANLON, and  
TERRY J. OWENS, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL  
STATEMENT OF THE CASE

The Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-28, which are all of the pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

*The Invention*

The Appellants claim a method and apparatus for customizing a pet food. Claim 4 is illustrative:

4. A method for customizing a pet food for a pet, said method comprising:

obtaining an individual pet profile for the pet;

processing the individual pet profile to create a pet food additive formula;

suggesting a pre-manufactured kibble that correlates with the processed pet profile;

preparing a pet food additive derived from the created pet food additive formula;

obtaining a biological sample analysis from the pet after the pet has eaten a combination of the kibble and the additive; and

preparing a second pre-manufactured kibble and a second pet food additive that is based on the biological sample analysis and the individual pet profile.

*The References*

Pratt	5,340,211	Aug. 23, 1994
Jones	6,042,857	Mar. 28, 2000
Nadeau	6,280,779 B1	Aug. 28, 2001 (filed Dec. 28, 1999)
Abene	6,669,975 B1	Dec. 30, 2003 (filed Feb. 3, 2000)

*The Rejections*

The claims stand rejected under 35 U.S.C. § 103 as follows: claims 1-7 and 11-28 over Abene in view of Nadeau and Jones, and claims 8-10 over Abene in view of Nadeau and Pratt.

OPINION

We affirm the Examiner's rejections.

*Issue*

Have the Appellants shown reversible error in the Examiner's determination that the applied prior art would have rendered *prima facie* obvious, to one of ordinary skill in the art, obtaining a biological sample analysis from a pet after the pet has eaten, based on an individual pet profile, a combination of a first kibble and an additive (claims 1, 4, 11 and 13) or a pet food manufactured according to a first pet food formula (claim 12), or means for suggesting a second pre-manufactured kibble and a second pet food additive formula based on the biological sample analysis and the individual pet profile (claim 8)?

*Findings of Fact*

Abene discloses a customized dietary health management system for pets wherein information is collected on a pet profile form completed by the pet's owner or a veterinarian pertaining to parameters such as the pet's size, age, sex, health and activity level which control the pet's protein and caloric needs (col. 3, l. 45 – col. 4, l. 48). At least one formulation of a pre-made dry kibble and a mixture of functional ingredients is selected based on the pet's profile to provide a customized dry pet food (col. 3, ll. 23-27). The functional ingredients include essential fatty acids, vitamins and minerals to ensure a healthy skin and coat, antioxidants to raise the blood's antioxidant

level, and fructooligosaccharides to help good bacteria in the digestive tract and improve nutrient absorption for good digestive health (col. 4, ll. 48-54). “[T]he information from the pet profile can be input into a software program that will convert the information into an appropriate formulation for the customized dry kibble” (col. 5, ll. 36-39). The customized diet is “sent directly to the pet owner, veterinarian or animal health care provider on a regular basis” (col. 8, ll. 8-11). “The system also includes a feedback mechanism that allow[s] the dietary health management system to be adjusted as the needs of the companion animal changes” (col. 8, ll. 11-13).

Nadeau discloses “a pet food composition comprising meat chunk and gravy, said gravy having chemically modified starch, gum, or mixtures thereof in quantities less than that necessary to promote the production of stool quality which is unacceptable” (col. 1, ll. 44-48), i.e., “loose, watery stools, or straight diarrhea when the animal defecates” (col. 1, ll. 33-35). Nadeau evaluated and graded the feces of ten adult beagle dogs daily after they were fed a number of pet foods, only one of which provided acceptable stool quality (col. 6, ll. 36-65; col. 7, ll. 63-67).

The Examiner relies upon Jones for a disclosure of specific fibers and additives, and Pratt for an apparatus which has programmable control and is capable of customizing a pet food (Ans. 6-7).

#### *Analysis*

The Appellants argue that “[b]ecause *Nadeau* applies to pets already experiencing a stool problem stemming from a general pet food, any stool sample taken subsequently does not disclose or suggest a biological sample analysis taken after the pet has eaten a kibble, additive or pet food based on a pet profile” (Br. 14; Reply Br. 3).

“A person of ordinary skill is also a person of ordinary creativity, not an automaton.” *KSR Int’l. Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (2007). In making an obviousness determination one “can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR*, 550 U.S. at 418.

Abene provides feedback for adjusting a pet’s dietary health management system after the pet has eaten a kibble/additive based on a pet profile (col. 3, ll. 23-27; col. 8, ll. 11-13). Abene’s disclosure that it is a pet health management system that is being adjusted would have led one of ordinary skill in the art, through no more than ordinary creativity, to provide feedback in any form that indicates the pet’s health. Nadeau would have indicated to one of ordinary skill in the art that one such form is a stool sample analysis, which is a biological sample analysis. Abene’s disclosure that the diet can be customized to provide digestive health (col. 4, ll. 44-45) would have led one of ordinary skill in the art, through no more than ordinary creativity, to use a stool sample to provide feedback regarding the pet’s digestion. Abene’s disclosure that the diet can be customized to provide skin and coat health, wound healing and immune system enhancement (col. 4, ll. 43-48) would have led one of ordinary skill in the art, through no more than ordinary creativity, to use other biological sample analyses which indicate the pet’s health in those respects.

The Appellants argue that “*Abene, Nadeau and Pratt* all fail to disclose or suggest a means for suggesting a second pre-manufactured kibble and a second pet food additive formula based on the biological sample analysis and the individual pet profile” (Reply Br. 4).

Such means include the corresponding structure disclosed in the Appellants' Specification and equivalents thereof. *See In re Donaldson Co. Inc.*, 16 F.3d 1189, 1195 (Fed. Cir. 1994). The Appellants' means is a computer (Spec. ¶ 0019). Computer software can convert Abene's pet profile information to an appropriate pet food formulation (col. 5, ll. 33-45). One of ordinary skill in the art, through no more than ordinary creativity, would have used Abene's software to suggest a second kibble/additive when the feedback by a technique such as biological sample analysis as discussed above indicated a need for a modification of the first kibble/additive diet.

*Conclusion of Law*

The Appellants have not shown reversible error in the Examiner's determination that the applied prior art would have rendered *prima facie* obvious, to one of ordinary skill in the art, obtaining a biological sample analysis from a pet after the pet has eaten, based on an individual pet profile, a combination of a first kibble and an additive (claims 1, 4, 11 and 13) or a pet food manufactured according to a first pet food formula (claim 12), or means for suggesting a second pre-manufactured kibble and a second pet food additive formula based on the biological sample analysis and the individual pet profile (claim 8).

**DECISION/ORDER**

The rejections under 35 U.S.C. § 103 of claims 1-7 and 11-28 over Abene in view of Nadeau and Jones, and claims 8-10 over Abene in view of Nadeau and Pratt are affirmed.

It is ordered that the Examiner's decision is affirmed.

Appeal 2009-004604  
Application 09/881,935

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

kmm

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